

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WEIFANG TENG YI JEWELRY
TRADING CO., LTD.,

Plaintiff,

-vs-

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,
et al.,

Defendants.

Case No. 18 C 4651

Chicago, Illinois
September 6, 2018
10:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GARY FEINERMAN

APPEARANCES:

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18 For Defendant MR. DAVID BUCUREL, Pro Se.
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20 (via telephone
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21

22

23

24

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1 (Proceedings heard in open court:)

2 THE CLERK: 18 C 4651, Weifang versus The
3 Partnerships.

4 MR. McELVENNY: Good morning, your Honor. Charlie
5 McElvenny as local counsel for plaintiff.

6 MS. DOLAN: Good morning, your Honor. Carrie Dolan,
7 local counsel for Intuii, LLC, and Jens Sorensen, defendants.

8 MR. GAO: Good morning, your Honor. I'm Frank Gao.
9 I'm from Beem Patent Law Firm, 53 West Jackson Boulevard. I'm
10 representing the defendant Atriya Bhattacharya, defendant
11 name -- No. 163 and 362.

12 MR. BEEM: Richard Beem also for defendant
13 Bhattacharya.

14 THE COURT: All right. And do we have anybody on the
15 phone?

16 MR. ZELKIND: Yes. This is --

17 MR. BUCUREL: It's David Bucurel for Redtheater.

18 THE COURT: Hold on. Let's -- it's hard for you to
19 know in what order to go. So, why don't we start with
20 plaintiff's counsel, and then we'll go to anybody representing
21 a defendant.

22 Is there anybody from the plaintiff's side on the
23 phone?

24 MR. McELVENNY: I don't believe Mr. Banister has
25 called in yet. I don't think -- I don't know if he intends

1 to, Judge.

2 THE COURT: All right. Then who else do we have?

3 MR. GENOV: Your Honor, this is Dimitar --

4 MR. ZELKIND: Thank you. This is Boris Zelkind from
5 Knobbe Martens representing defendants Jens Sorensen and
6 Intuii, LLC.

7 MR. GENOV: Sir, my name is Dimitar Genov of
8 DPG Store. I'm the owner of DPG Store.

9 THE COURT: Okay. And could you please spell your
10 last name.

11 MR. GENOV: Sure. It's G-E-N-O-V.

12 THE COURT: G-E-N-O-V? And what's the name of your
13 business again?

14 MR. GENOV: It's DPG Store.

15 THE COURT: Okay. Dog, Peter, great?

16 MR. GENOV: Yes, Store.

17 THE COURT: Okay. Very good. So -- anyone else?

18 MR. DECKER: Yeah -- sorry, go ahead. Go ahead.

19 MR. BUCUREL: I'm David Bucurel. I'm the owner of
20 Redtheater.

21 THE COURT: Of what?

22 MR. BUCUREL: Redtheater. I'm not -- I'm not
23 currently -- I was dismissed from the case, but PayPal is
24 still under the assumption that there's an injunction on my
25 account.

1 THE COURT: Okay. And then who else?

2 MR. BUCUREL: I guess I needed to explain myself
3 there.

4 THE COURT: And anyone else?

5 MR. DECKER: Yes. My name is Lee Decker. I'm the
6 owner of the eBay stores Faster.Forward and Year-Ring-Promise.

7 THE COURT: Anyone else? Very good.

8 So, we have, I think, two motions that have been
9 filed, and one of them is Intuii and Sorensen's motion for
10 damages. The other one is the plaintiff's motion for a
11 preliminary injunction. And I think another motion was filed
12 early this morning. I have not had a chance to review it,
13 so -- but I will.

14 So, let me ask the movant -- and I know that
15 Mr. Banister is not here and we have local counsel, so I'm not
16 putting you on the spot; but if there is anything that you
17 would like to say either in support of the preliminary
18 injunction motion or in opposition to Intuii and Sorensen's
19 motion, I wanted to at least give you the opportunity.

20 MR. McELVENNY: Sure, Judge. Well, I appreciate
21 that. We're going to stand on our briefs, but I would like
22 to -- I would like to restate that I think there's been some
23 confusion about the use of the term "counterfeit" and the use
24 of the term "infringement" in this case and what those words
25 actually mean and what the Lanham Act says they mean and what

1 the case law says they mean.

2 And I think the arguments are well put out in our --
3 in the most recent reply brief, both -- it's a reply brief in
4 support of the motion for a preliminary injunction, but I
5 think it's also relevant to the damages issue, the motion
6 brought by certain defendants.

7 And we would just stand on and incorporate that
8 argument -- the arguments in all the briefs as to the -- as to
9 both pending motions.

10 THE COURT: So, you're drawing -- the plaintiff is
11 drawing a distinction between counterfeiting and infringement?

12 MR. McELVENNY: No, Judge. Actually, I think -- I
13 think the Lanham Act and the case law makes clear that there's
14 not really a distinction made. Those terms are used
15 interchangeably, which leads to some confusion. But whether
16 or not the product is counterfeit, i.e., made by an entity
17 that is not by the primary manufacturer and trademark holder
18 and patent holder, does not mean that it can't be -- it can't
19 be a counterfeit good if it's sold under a trademark that has
20 not been approved and that has not been assigned appropriately
21 via -- through the first sale doctrine or via some other
22 mechanism.

23 THE COURT: Okay. I want to make sure I understand
24 your position. So, a counterfeit good is a good that is not
25 produced by the manufacturer or the trademark holder?

1 MR. McELVENNY: Judge, a counterfeit good can also --
2 it's my understanding a counterfeit good can also be a good
3 that may have been produced by the manufacturer, but that is
4 being sold by a party that doesn't have proper use of the
5 trademark. And that's what's in our briefs.

6 THE COURT: Okay. And so if something -- if a good
7 is manufactured by Weifang but it's sold in a way -- it's sold
8 by a party who's not properly using the trademark, then
9 Weifang believes that that is also counterfeit?

10 MR. McELVENNY: That's what -- that's in the briefs,
11 Judge, and that's what the case law and that's what the Lanham
12 Act contemplates. The word "counterfeit" is used in
13 conjunction with those types of transactions.

14 THE COURT: Okay. Then what does "infringement"
15 mean?

16 MR. McELVENNY: Infringement --

17 THE COURT: Is it infringement --

18 MR. McELVENNY: Again, they're used interchangeably,
19 Judge.

20 THE COURT: Okay. Are they 100 percent
21 interchangeable, meaning that if you have a Venn Diagram of
22 infringement and a Venn Diagram of counterfeit, they're
23 perfectly on top of one another; and there's no -- there's
24 nothing that's an infringement that's not a counterfeit, and
25 there's nothing that's a counterfeit that's not an

1 infringement?

2 MR. McELVENNY: I don't know the answer to that,
3 Judge.

4 THE COURT: Well, that's an important question,
5 because what kind of -- the briefs make a big deal, and
6 perhaps appropriately so, saying, "Well, we didn't -- we said
7 infringement. We said counterfeit." And the question is:
8 What do you mean by infringement, and what do you mean by
9 counterfeit? And if there are things that are infringements
10 but not counterfeit and vice-versa, that's important.

11 I'll tell you, I got the sense from -- and I
12 mentioned this to Mr. Banister, and I'll mention it again.
13 And I reviewed -- I wanted to be sure that I wasn't being
14 unfair to Mr. Banister or the plaintiff, so I reviewed the
15 original materials that were filed to make sure that I didn't
16 miss anything that was being argued.

17 And you may say, "Well, it's easy for you to say,"
18 but I'll say it anyway. I don't think I missed anything; and
19 if I did miss something, it was an incredibly subtle point
20 that I don't think anybody would have picked up on, which is
21 the argument that counterfeit means not just a fake good,
22 meaning a product that's not manufactured by Weifang, but also
23 means the defendant offering it for sale without first
24 purchasing it itself.

25 That -- that was nowhere in -- in the papers. And

1 I -- I looked again at the declaration of Mr. Teng Guangyao,
2 that's T-E-N-G, G-U-A-N-G-Y-A-O, which is docket No. 9. And
3 this is something that I look at before I enter a TR0. And
4 the -- and I also looked at Mr. Banister's declaration, which
5 was docket No. 8, which addresses selling counterfeit goods
6 and mentions counterfeit and pirated products, and there are
7 three attachments.

8 And in context, I think the only reasonable
9 interpretation of what Mr. Banister was talking about was
10 goods that were not produced by Weifang, but rather were fake
11 goods. And that's in light of what -- not just the text of
12 his declaration, but also the three attachments, which were
13 government reports about fake goods.

14 And then the second declaration, Mr. Guangyao
15 references counterfeiting a number of times. Paragraph 10,
16 "Cheap imitation counterfeits," that does not convey a product
17 that is produced by Weifang yet sold by a party that didn't
18 have the rights to the trademark. That conveys not produced
19 by Weifang.

20 Paragraph 11, "Defendants are using various web
21 stores to sell counterfeit products from foreign countries
22 such as China." Again, that has fake good all over it. And
23 by fake good, I mean not manufactured or produced by Weifang.

24 Paragraph 12, "I personally analyzed each of the
25 infringing websites, screen shots of which are attached

1 hereto, and determined that the Counterfeit Products," capital
2 C, capital P, "are being offered for sale to residents of the
3 United States in the State of Illinois. I reached this
4 conclusion through visual inspection of the products as they
5 appeared on the infringing web stores, the price at which the
6 counterfeit products were offered for sale, and other features
7 commonly associated with websites selling counterfeit
8 products."

9 That conveys fake good, especially the reference to
10 the price because fake goods cost less and drop-shippers
11 charge more. So, this is not referring to drop-shippers who
12 are selling goods that are manufactured by Weifang. It's
13 referring to folks who are selling goods that were not
14 manufactured by Weifang, so the first kind of counterfeit --
15 the first definition of counterfeit that you gave and that
16 the briefs give.

17 Paragraph 17, "Many of the counterfeit products for
18 sale in the defendant stores bear similar irregularities, an
19 indicia of being counterfeit to one another, suggesting that
20 the counterfeit products were manufactured by and come from a
21 common source, and that defendants are interrelated."

22 "Were manufactured and come from a common source, and
23 that defendants are interrelated." The source that this
24 affiant was referring to was not Weifang. It was a different
25 source. And this is once again conveying counterfeit, meaning

1 not produced, not manufactured by Weifang.

2 Paragraph 21, "Plaintiff's goodwill and reputation
3 are irreparably harmed when the ULOVEID0 trademark is used on
4 goods not authorized, produced, or manufactured by plaintiff."
5 That speaks for itself.

6 Paragraph 23 refers to low-quality products. I don't
7 think that Mr. Guangyao was calling his own products
8 low-quality products, which means that he was referring to
9 products that were manufactured by somebody other than, a
10 company other than Weifang.

11 And so when I get one of these cases, I read the
12 papers. I try and assure myself, "Okay. This is a case
13 involving counterfeit goods," in the more common sense. And
14 again, you reference a second sense that counterfeit can mean.
15 I don't know if it actually means that; but at a minimum, the
16 first sense, the fake good, the not produced or manufactured
17 by Weifang is the more common sense.

18 And that's what was being conveyed, and that's why I
19 granted the TR0. And it turns out that at least as to Intuii
20 and Sorensen, that was not correct. And that is where this
21 case quickly got off on the wrong foot.

22 So, I will -- I've reviewed the briefs. I'll review
23 them again. Just because -- so, when I said that -- and I
24 didn't say false premise. When I said incorrect premise,
25 that the TR0 was entered on an incorrect premise, I stand by

1 that 100 percent because the premise was that these were fake
2 goods, not that they were counterfeit in the second way that
3 Weifang is arguing that may, in fact, not actually reflect
4 what counterfeit means; but even if it does, that's not what
5 was being -- that counterfeit was not what was being conveyed
6 by the moving papers. It was the first, more common use of
7 counterfeit, meaning that it was manufactured by somebody
8 other than Weifang.

9 So, that doesn't mean, though, that the plaintiff
10 isn't right on what it's arguing right now, which is what the
11 defendants are doing, which is not what I was told they were
12 doing originally, but what the defendants are now alleged to
13 do violates the Lanham Act and the other laws that have been
14 cited. And we can go forward.

15 It would have been better for Mr. Banister, instead
16 of finding himself in a hole and continuing to dig, to
17 graciously extract himself from the hole and say, "Okay. We
18 originally thought we were dealing with counterfeit goods,
19 meaning fake goods, but we now see that the situation is
20 different, at least with respect to some of the defendants.
21 But we still win, and here's why."

22 And I would say, "Okay. That's fine." People don't
23 get everything 100 percent right in their complaints, and you
24 can shift gears in litigation when you learn new things.
25 There's nothing wrong with that.

1 But by digging in his heels on this and suggesting
2 that he was making an argument from the outset that he clearly
3 was not making, he does not help himself. He does not help
4 his credibility. And he does not help his client, most of
5 all.

6 So, I said a lot, and you do not have to respond, but
7 I want to -- I think it's only fair to give you an opportunity
8 if you would like to.

9 MR. McELVENNY: Judge, we're going to -- we'll stand
10 on the briefs.

11 THE COURT: Okay. All right. Anything from -- well,
12 let's first talk about Redtheater, is it?

13 MR. BUCUREL: That's correct, yes.

14 THE COURT: Okay. So, you're still frozen by PayPal?

15 MR. BUCUREL: I am. And actually, I had to contact
16 eBay myself to remove the extension; but the thing is while I
17 could send eBay the motion to dismiss me from the case, PayPal
18 said neither me nor an attorney would be able to send any
19 information to PayPal. It would need to come from either the
20 court or from the plaintiff's attorney.

21 THE COURT: Okay. So, you've been dismissed from the
22 case?

23 MR. BUCUREL: Yeah. I believe it was on the 21st or
24 the 20th.

25 THE COURT: Okay. It looks like it was the 20th.

1 And you're defendant No. 189, is that right?

2 MR. BUCUREL: That's correct, yeah.

3 THE COURT: Okay. So, let me suggest this. I'm
4 going to ask you to do something, and I'm going to ask the
5 plaintiff to do something.

6 What you should do is you should send eBay or PayPal
7 or whoever you're having a problem with, send them this
8 order -- or this notice of voluntary dismissal, which is
9 docket 48, which is what you received on August 20th.

10 MR. BUCUREL: I did talk to PayPal about that; and
11 unfortunately, they told me -- I don't know why this is the
12 case, but they said that neither me nor the plaintiff's
13 attorney -- I mean nor my attorney would be able to send over
14 any motion or anything. It would actually need to come from
15 the court or the plaintiff.

16 THE COURT: Okay. This is what I'll do. In today's
17 order, there's going to be a line that says, "Pursuant to the
18 August 20th notice of voluntary dismissal, Defendant
19 Redtheater" -- and that's one word, right?

20 MR. BUCUREL: That's right. And also, I see --

21 THE COURT: Hold on one second.

22 MR. BUCUREL: Sorry, sorry, sorry.

23 THE COURT: "Defendant Redtheater has been dismissed
24 and is currently under no restraints."

25 I'm not going to send that to eBay or to PayPal just

1 because we don't do that, but you should send it to eBay and
2 PayPal immediately.

3 And I'm also going to ask plaintiff's counsel to also
4 send it to eBay and PayPal and to confirm that -- in writing
5 that Redtheater has been dismissed from this action. And that
6 should do the trick.

7 MR. BUCUREL: That sounds good. Thank you very much.

8 THE COURT: Sure. Is there anybody else on the phone
9 who has a similar issue to Redtheater?

10 Okay. Anybody in the courtroom who has a similar
11 issue to Redtheater? No?

12 Okay. So, let me turn it over to the defendants.
13 Anything that -- we'll start with Intuii and Sorensen.
14 Anything that you'd like to say, add to your briefs on either
15 the preliminary injunction issue or the damages issue?

16 MR. ZELKIND: Your Honor, yeah, this is Boris
17 Zelkind. I mean, it's a little bit frustrating because it's a
18 moving target here.

19 With respect to the request for damages, it seems
20 like the Court asked very clearly for plaintiff to do two
21 things, which was identify what they did pre-litigation to
22 ascertain whether or not the defendants were, in fact, foreign
23 or U.S., and two, whether or not -- what they did pre-filing
24 to determine whether the products were counterfeit.

25 And rather than actually do that, plaintiff went into

1 additional arguments about what the word "counterfeit" means
2 and various other things. But what is clear is that they did
3 not do any pre-filing investigation.

4 And Mr. Banister says that -- you know, that it's
5 hard to do and you can't trust the information; but frankly,
6 all they had to do was take that Schedule A that they
7 prepared, click on each line, and then click on the -- one
8 further click on the defendant's store name would have shown
9 the location of the defendant.

10 And 10 percent almost, I think it was 9 if we look at
11 Mr. Banister's later declaration, 9 percent of the named
12 defendants were actually located in the U.S.

13 So, it was not a significant effort for them to do.
14 They just didn't do it and frankly didn't really talk about
15 that when the Court asked.

16 And then two, when the question of what did plaintiff
17 do to ascertain the counterfeit nature, again, there was
18 really -- there was the declaration of Mr. Guangyao, if I'm
19 pronouncing that correctly; but again, they didn't buy any
20 products. They didn't actually examine products. Allegedly,
21 they looked at the image, but frankly, the image that was
22 attached to the declaration with respect to Intuii and
23 Mr. Sorensen didn't have any images of the product.

24 So, to the extent that Mr. Guangyao says that he
25 looked at the images that were available online and that was

1 the evidence, he didn't have one with respect to this
2 defendant, which frankly, I would argue that that's not enough
3 to ascertain whether or not that's a counterfeit. When I've
4 dealt with these issues, people who have assertions actually
5 purchase some products to ascertain.

6 This kind of gets to a later point, which I guess it
7 addresses both our request for damages and the preliminary
8 injunction motion, this new theory of counterfeiting, it's
9 hard to deal in a straight face here with somebody that says
10 there's no difference between counterfeiting and regular
11 infringement.

12 Counterfeiting is a subset of trademark infringement.
13 It is a very special and particularized conduct that the
14 Congress has legislated against and created specific remedies,
15 such as statutory damages, that aren't available for plain old
16 trademark infringement. And the statutory damages are
17 dramatic. They've authorized \$2 million for willful acts of
18 counterfeiting.

19 There's a very specific definition, and there's
20 absolutely no blurring about what counterfeiting is and what
21 regular trademark infringement is. And to hear plaintiff say
22 that, it's hard not to get worked up about.

23 There's also the fact that counterfeiting, the
24 statute allows for seizure of product, of counterfeit goods.
25 Again, this isn't available for standard old trademark

1 infringement. So, there's no blurring. It's very clear. The
2 statute says what counterfeiting is, and it is these fake
3 goods.

4 And the cases -- and this is specifically dealing
5 with this reply that was filed. The cases that are presented
6 in plaintiff's reply brief on page 5 and 6, this is document
7 No. 69, in the section that says, "Goods Cannot Be Genuine
8 When the Mark Holder Did Not Authorize Their Initial Sale,"
9 whether it's the *Liz Claiborne* case, the *Ryan v. Volpone*, all
10 of them, *El Greco*, *By Design PLC*, they all deal not with
11 counterfeit goods. They deal with what are called overrun
12 goods or irregular or seconds. These are -- it's a completely
13 different situation than what we have here. And all these
14 cases say is what may or may not be genuine. They're not
15 talking about what is or is not counterfeit.

16 The cases specifically talk about something that
17 maybe was originally authorized but then the trademark holder
18 says this was an overrun. It's too many. They canceled the
19 contract, and so they didn't authorize the manufacturing and
20 sale by the manufacturer of certain goods.

21 Or maybe there are irregularities because they didn't
22 fit -- they didn't pass certain quality measures that every
23 trademark owner has the right to control. And so those
24 irregularities then might also cause the contract to be
25 broken, in which case that initial sale by the manufacturer

1 will not be authorized.

2 Those are very different situations than here, and to
3 try to conflate the two is disingenuous because there is no
4 allegation that ULOVEIDO or Weifang was selling irregular or
5 overrun products on its own Amazon website. The products in
6 question here that the drop-shippers, or at least Mr. Sorensen
7 and Intuii, are alleged to have offered for sale are ones that
8 were directly available from Weifang's own website. Those
9 were not unauthorized manufactured goods. Those weren't
10 overruns. Those weren't seconds or irregulars.

11 So, all of those cases are not on point. They're
12 inapposite. And to argue that they somehow justify this new
13 theory of counterfeiting is not a good faith argument.

14 This is a continuation and doubling down of a
15 frivolous theory that, first of all, wasn't even put forward
16 at the initial TRO, but is causing our client to continue to
17 defend and spend more money when it's very clear they were
18 wrongfully accused. They don't belong here. They should be
19 out of this case. And their fees should be paid.

20 Instead, we're having to constantly go back and deal
21 with new motions, more briefing. And it's just increasing the
22 cost of litigation where there's no good faith basis for these
23 assertions.

24 THE COURT: All right. Thank you.

25 Let me ask, either of the defendants in the

1 courtroom, do you have anything to add?

2 MR. GENOV: Yes. This is Dimitar Genov. I'm sorry.

3 THE COURT: If you can hold on one second. I want to
4 give the folks in the courtroom a chance.

5 MR. GENOV: I apologize.

6 THE COURT: That's okay.

7 MR. GAO: Your Honor, this is --

8 THE COURT: If you could please speak a little louder
9 and into the microphone.

10 MR. GAO: Sure. This is Frank Gao from Beem Patent
11 Law Firm. I was going to ask the Court to dismiss my client
12 as a defendant, 163 and 362. Basically --

13 THE COURT: Could you say the name of that defendant
14 again?

15 MR. GAO: Atriya Bhattacharya, defendant 163 and 362.

16 THE COURT: Okay. Can you say those numbers one more
17 time?

18 MR. GAO: 163.

19 THE COURT: 163.

20 MR. GAO: 362.

21 THE COURT: 362. So, you have two defendants, and
22 those are their numbers?

23 MR. GAO: Same defendant.

24 THE COURT: Same defendant, two numbers?

25 MR. GAO: Two numbers. I don't know why. We made

1 agreement with Mr. Banister, the plaintiff attorney, and our
2 client signed an agreement already. We're still waiting for
3 Mr. Banister's signature so that we can file a motion to
4 dismiss or ask Court to dismiss us.

5 THE COURT: Okay. Yeah. What would happen is once
6 everything is done, you'd probably -- the plaintiff would
7 probably file a notice of voluntary dismissal.

8 So, could you talk to Mr. Banister about this one
9 defendant, although it seems that they may be listed under
10 163 and 362?

11 MR. McELVENNY: Yes, Judge.

12 THE COURT: Okay.

13 MR. GAO: Also, your Honor, we would like to file a
14 motion to ask the Court to unseal defendants' e-mail address
15 so that we can make sure there's no other defendant address
16 linked to my client. And I want to make sure, you know, the
17 Court can dismiss our client once and for all. That's it.

18 THE COURT: So, I'm not sure I understand. What
19 docket number are you asking me to unseal?

20 MR. GAO: The defendant -- I know -- let me see.
21 Basically, I saw the Court unsealed the defendant list, but I
22 want to know their defendant correspondence, the e-mail
23 address. Let's see. Hold on. Sorry about that.

24 THE COURT: Because I think I have unsealed
25 everything at this point.

1 MR. GAO: The defendant correspondence, the e-mail
2 address?

3 THE COURT: Okay. If you can give me a docket number
4 on the docket, then I can follow along with you.

5 MR. GAO: Hold on. The sealed document No. 10.

6 THE COURT: Yes. Okay. This is the declaration that
7 we were talking about.

8 MR. GAO: You know, it's sealed. I couldn't see
9 anything about it, and --

10 THE COURT: Okay. So, let me ask, is there any
11 objection from the plaintiff to unsealing docket No. 10, which
12 is Mr. Guangyao's declaration with the exhibits?

13 MR. McELVENNY: Judge, I'm going to have to reserve.
14 I don't know whether or not Mr. Banister has an objection to
15 unsealing that because I don't know what's in there and I
16 don't know whether or not the client wants it sealed.

17 THE COURT: Okay. Well, there has to be a reason to
18 seal it. So, it's basically Mr. Guangyao's declaration, which
19 is at docket 9, which is unsealed. And the only thing in the
20 exhibits are -- well, I have it right here. The exhibits are
21 just screen shots of the websites, so I don't think that
22 there's anything --

23 MR. McELVENNY: From my client's end?

24 THE COURT: No, no.

25 MR. McELVENNY: Okay, Judge.

1 THE COURT: So, I'm going to order that the -- I'm
2 going to ask the clerk to unseal docket No. 10.

3 MR. GAO: Your Honor, on August 15, I noticed that a
4 summons issued to defendant, Schedule A. There was no
5 document number. I was wondering if we can get that unsealed
6 so we can know the --

7 THE COURT: You mean Exhibit A? Right. Exhibit A --
8 in these cases, the list of the defendants is sealed initially
9 because the whole point is that these are -- I hate to beat a
10 dead horse, but overseas counterfeiters that once they know
11 they're being sued, they take all the money back overseas and
12 you can't get it anymore, which is why I always grant these
13 TROs because that's what I think is happening; although it
14 turns out at least with respect to some defendants, that
15 wasn't happening in this case.

16 But usually what happens is that Exhibit A, which is
17 initially sealed, then gets unsealed. But I don't know if
18 it's on the docket or not.

19 MS. DOLAN: Your Honor, it's on the docket as docket
20 No. 26. There was an amended complaint that was filed.

21 THE COURT: Okay.

22 MS. DOLAN: There was no leave of court for it to be
23 filed, but it was filed; and that's when the exhibit, amended
24 Schedule A, was filed. And it sets forth the list of
25 defendants by name.

1 THE COURT: Yes.

2 MS. DOLAN: But I am not sure -- and I think this is
3 counsel's question -- that it sets forth that list of
4 defendants by e-mail contact address. And I believe counsel
5 is trying to get a copy of the e-mail list that's used for
6 serving all of the defendants in this case.

7 THE COURT: I see. Right. I'm looking at the
8 original Schedule A, which is filed under seal, and the
9 e-mails are not on that, either.

10 So, I've never had this request before, so if you
11 would like to -- you could ask the plaintiff's counsel for
12 the e-mails, and if he gives it to you, great. If he doesn't
13 give it to you, I'm going to need for you to file a motion
14 establishing your entitlement to those e-mails. Okay?

15 MR. GAO: Yes, sir.

16 THE COURT: Okay.

17 MR. GAO: Yes, your Honor.

18 THE COURT: Anything else from the folks in the
19 courtroom?

20 MR. GAO: No.

21 THE COURT: No? Okay. So, how about on the phone?

22 MR. GENOV: Yes, your Honor. My name is Dimitar
23 Genov for DPG Store. I think I'm defendant No. 170 in the
24 list.

25 THE COURT: Is that 1-7-0?

1 MR. GENOV: Yes, sir.

2 THE COURT: Okay.

3 MR. GENOV: So, basically, I have a question because
4 from all the things that I've heard from today's hearing and
5 last time's hearing, I see that Mr. Banister, even though we
6 agree on something at the actual hearing, he doesn't do them,
7 and I don't know why.

8 So, basically, my question is: Is there a way that I
9 can send to someone else my proof that I'm falsely accused of
10 something, you know, just to be sure that all the documents
11 that I provided will actually go to the hearings in the
12 courtroom? Because now I'm not even sure about it.

13 Because it's a very simple thing. I have proof from,
14 I don't know, transactions from three years ago, maybe. For
15 every single transaction, I have proof from where I bought it,
16 what's my business model and everything. And, I mean, I
17 wouldn't change it just for the ULOVEIDO product, which was
18 one product which I had.

19 THE COURT: Okay. I'm not quite sure what you're
20 asking for, sir. Have you been dismissed -- have you been
21 dismissed or not?

22 MR. GENOV: No, no, I haven't been. I haven't been,
23 or at least I haven't been told. Because Mr. Banister stopped
24 replying to my e-mails, and that's why I'm not even sure if my
25 case would go to court.

1 THE COURT: So, you've sent Mr. Banister an e-mail,
2 and you have not yet gotten a response, is that correct?

3 MR. GENOV: No. I used to get responses; but since
4 last hearing, I didn't get any response because I asked him to
5 send me an e-mail with his conversation with eBay just to be
6 sure that the TRO was lifted from my account, but he didn't
7 answer. I think when he realized that I'm not agreeing on any
8 settlement, he stopped wasting his time on me, I guess.

9 THE COURT: Okay. So, the TRO has been lifted as to
10 everybody. So, there is no more TRO.

11 MR. GENOV: Yes.

12 THE COURT: And there's not a preliminary injunction.
13 So, right now, you have no injunction against you, no order
14 against you. It doesn't mean that you can counterfeit,
15 because if you are counterfeiting, that's illegal, and you're
16 not allowed to do that. But right now, there's no -- there's
17 no preliminary injunction or TRO against you, so you should
18 not be restrained by order of court in any way.

19 Other than that, I don't know what you're asking.

20 MR. GENOV: I am able to sell again, to have my
21 business back up and running; but I am not dismissed from the
22 case, right?

23 THE COURT: That's correct. You're still in the
24 case.

25 MR. GENOV: So, my point is I just want to be

1 dismissed from the case, and I have proof of all of these
2 accusations, that they're false. And that's what my question
3 is, if I can send my proof to someone else just to be sure
4 that it will end up in court, the actual proof, so I can get
5 dismissed.

6 THE COURT: Okay. So, what you need to do is -- are
7 you in the United States or overseas?

8 MR. GENOV: No, overseas.

9 THE COURT: Okay. This is very complicated, and I
10 don't want to be in a position of giving you legal advice
11 because I'm the judge and I shouldn't be giving anybody legal
12 advice.

13 But what I can say is that if you would like to be
14 dismissed from the case, you need to send your materials to
15 the court that's styled a motion to dismiss and explain why
16 you should not be in the case.

17 Alternative -- and this is why I didn't want to go
18 down this road, but I did anyway. A motion to dismiss
19 presents legal arguments for getting out of the case. If
20 you're just denying the allegations, it has to be styled as an
21 answer, which is a different kind of pleading.

22 So, as to what is best for you, I can't say. If you
23 believe that you were wrongly accused, you should, in addition
24 to sending your materials to the court, also send it to
25 Mr. Banister and explain to him why you were wrongly accused.

1 If you want to -- if you think that you may have been doing
2 something wrong but you stopped and you want the case to go
3 away, you can make a settlement offer to Mr. Banister. But
4 that's up to you.

5 But the way to address the Court is to actually send
6 materials to the Clerk of Court here in Chicago and file
7 something on behalf of yourself and your company.

8 MR. GENOV: I see.

9 THE COURT: Okay?

10 MR. GENOV: Is it possible all this to be done
11 online, or I have to send actual papers?

12 THE COURT: I would call -- I would call the Clerk's
13 Office. So, what you should do is you should go to the
14 website for the U.S. District Court for the Northern District
15 of Illinois. Our phone number is 312 --

16 THE CLERK: 435-5690.

17 THE COURT: So, that's 312-435-5690. Tell them that
18 you're a defendant in this case. You'd like to submit
19 something to the court. And the folks in the Clerk's Office
20 will tell you the best way to do that.

21 MR. GENOV: Thank you so much, sir. Thank you, your
22 Honor.

23 THE COURT: All right. Do we have anybody else on
24 the phone who would like to say anything?

25 All right. So, I think everybody's been heard.

1 Anything from anybody else in the courtroom?

2 MR. McELVENNY: Judge, are we going to get a ruling
3 on the preliminary injunction -- motion for a preliminary
4 injunction as to non-appearing defendants?

5 THE COURT: You're going to get a ruling on
6 everything.

7 MR. McELVENNY: Okay.

8 THE COURT: So, I will -- I'll rule on that motion as
9 quickly as I can. I do need to review the materials once
10 again and decide on what the appropriate disposition is of
11 that motion.

12 So, why don't we set this --

13 MR. ZELKIND: Your Honor, this is Mr. Zelkind. One
14 question, with respect to the motion that was filed today, I
15 don't know if there's any hearing date or if your Honor will
16 issue an order saying if there is any opposition. Obviously,
17 to the extent that motion will be considered, we would like an
18 opportunity to be heard if the Court is so inclined.

19 THE COURT: Okay. I don't see a notice of motion,
20 and Local Rule 5.3(b) requires that all motions are noticed
21 for presentment. So, I imagine that a notice of presentment
22 will be filed in short order by the plaintiff, and that will
23 probably be our next date.

24 But just in case not, let's set this for a status
25 hearing, Jackie, during the first week of October.

1 THE CLERK: Sure. How about October 4th, 9:15 a.m.

2 THE COURT: All right. And anybody who would like to
3 call in, we'll have our -- we'll have this number, this line
4 open; and in today's order, we'll set forth the phone number
5 and the pass code.

6 MR. McELVENNY: Was that 9:15, Jackie?

7 THE CLERK: 9:15 a.m.

8 MR. McELVENNY: Thank you.

9 THE COURT: All right. Thank you.

10 MR. McELVENNY: Thank you, Judge.

11 MS. DOLAN: Thank you.

12 MR. GAO: Thank you.

13 (Which were all the proceedings heard.)

14 CERTIFICATE

15 I certify that the foregoing is a correct transcript from
16 the record of proceedings in the above-entitled matter.

17

18 */s/Charles R. Zandi*

September 7, 2018

19 _____
Charles R. Zandi
20 Official Court Reporter

Date

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